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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054050
Party	Defendant Unimundo Corp dba Unimundotv
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Date	02/06/2014
Attachments	Unimundo's Opposition Motion to Consolidate, Unimundo v. Univis.pdf(5148819 bytes)

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Registrant Unimundo Corporation by and through
Marcus Fontain, President and CEO, in pro se

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNIMUNDO CORPORATION, a Florida Corporation, Registrant, vs. UNIVISION COMMUNICATIONS, INC., a California Corporation, Petitioner.	Cancellation No. 92054050 Registration No. 3,889,485 Serial No. 85-003,668 Cancellation No. 92057999 Registration No. 4, 077,714 Serial No. 85-057,916 **UNIMUNDO'S OPPOSITION MOTION TO PETITIONER UNIVISION'S MOTION FOR CONSOLIDATION**

COMES NOW, Registrant Unimundo Corporation ("Unimundo"), and files this UNIMUNDO'S OPPOSITION MOTION TO PETITIONER UNIVISION'S MOTION FOR CONSOLIDATION. In Support of this Motion, Unimundo sets forth the following:

I

OPENING STATEMENT

The [only] reason why Petitioner Univision at this late date decided to file a new Petition for Cancellation; only this is time against the mark UNIMUNDO.COM, nearly three years

later after Univision file to cancel the mark UNIMUNDO is because Petitioner and its lawyers are desperately attempting to bootstrap both proceedings in order to avoid the consequences of their disobedience of the Order to conduct discovery issue by the Board on January 31, 2013 and their blatant failure to conduct discovery. There are no other legal, business, monetary, or moral reasons! **See Exhibit 1.**

Much like the previous filing against the mark UNIMUNDO; the new filings against UNIMUNDO.COM are baseless, unfair and malicious and nothing but more bulling, harassment and intimidation by Univision.

The Board should take notice of the bulling, the harassment and the intimidation by Univision and dismiss both the Petition to cancel UNIMUNDO and the petition to cancel UNIMUNDO.COM, with prejudice.

Therefore, Registrant Unimundo Corporation hereby opposes the consolidation of the proceedings for the following reasons:

II

PROCEDURAL BACKGROUND

On May 06, 2011, the Petitioner Univision began cancellation proceedings against the mark UNIMUNDO: Cancellation No. 92054050; Registration No. 3,889,485; Serial No. 85-003,668.

On October 08, 2013, nearly three (3) years later the Petitioner Univision began yet another cancellation proceedings; against the mark UNIMUNDO.COM: No. 92057999; Registration No. 4, 077,714; Serial No. 85-057,916.

On October 09, 2013, again, nearly three (3) years later Petitioner Univision filed a Motion for Consolidation of the proceedings of the mark UNIMUNDO: Cancellation No. 92054050 and the mark UNIMUNDO.COM: Cancellation No. 92057999; Registration No. 4, 077,714; Serial No. 85-057,916.

II

THE MOTION FOR DEFAULT JUDGMENT

On February 05, 2013, Registrant Unimundo filed a "Motion for Default Judgment" against Petitioner Univision pursuant to Rule 37(b)(2) of the Fed.R.Civ.Pro.; 37 C.F.R. Section 2.120(g)(1); and Fed.R.Civ.P. Rule 37(b)(2)(A)(vi), for failure to obey the

discovery order of January 31, 2013 when the Board ordered Univision to conduct Discovery in reference to the mark UNIMUNDO: Cancellation No. 92054050; Registration No. 3,889,485; Serial No. 85-003,668. To this date Univision has not conducted the discovery and did fail to conduct discovery as ordered. The Discovery schedule was ordered to be completed as follows:

Deadline for Discovery Conference **3/1/2013**

Discovery Opens **3/1/2013**

Initial Disclosures Due **3/31/2013**

Expert Disclosures Due **7/29/2013**

Discovery Closes **8/28/2013**

Plaintiff's Pretrial Disclosures **10/12/2013**

Plaintiff's 30-day Trial Period Ends **11/26/2013**

Defendant's Pretrial Disclosures **12/11/2013**

Defendant's 30-day Trial Period Ends **1/25/2014**

Plaintiff's Rebuttal Disclosures **2/9/2014**

See Exhibit 1.

When a party fails to comply with an order of the Board, "the board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the federal Rules of Civil Procedure[.]" 37 C.F.R. Section 2.120(g)(1). One such order, particularly appropriate for the failure to obey a discovery order is rendering of default judgment against the disobedient party. Fed.R.Civ.P. Rule 37(b)(2)(A)(vi).

The Motion for Default Judgment is now pending before the Board.

III

THE MOTION TO DISMISS

On January 05, 2014, Registrant Unimundo also filed a Motion to Dismiss Petition to Cancel the UNIMUNDO.COM mark for failure to state a claim, pursuant to Fed.R.Civ.Pro. Rule 12(b)(6) in the new Petition for Cancellation of the mark UNIMUNDO.COM: Registration No. 92057999; Registration No. 4, 077,714; Serial No. 85-057,916.

The Motion to Dismiss Petition is now pending before the Board.

IV

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

A. Additional reasons why the Motion to Consolidate should not go forward

Federal Trade Commission Rule 3.41(2) provides, in pertinent part:

> When Actions involving a common question of law or fact are pending Before the Administrative Law Judge,...the Administrative Law Judge May order all the actions consolidated; the Administrative Law Judge may Make such orders concerning proceedings therein as may tend to avoid Unnecessary costs or delay.

16 C.F.R. § 3.41(2). Pursuant to Federal Trade Commission Rule 3.43(a), complaint counsel as movants have the burden of proof on their motion.

An Administrative Law Judge must determine whether consolidation will result in a demonstrable savings of costs or time to the parties and the court. *In re Chrysler Motors Corp., et al.,* 1976 FTC LEXIS 448, *6(March 19, 1976). Consolidation should not be ordered if it has the negative potential for creating complications and confusion, causing delay, and increasing the burdens of the defense. Id. At *5.

Despite the fact that the new Petition UNIMUNDO.COM and the old Petition to Cancel UNIMUNDO are both strictly based on allegations founded solely on information and belief counsel for Univision still asserts that the following purported facts are common:

> *"(1) Both cancellation proceedings involve the same parties, essentially the same marks and the same issues of fact and law; (2) When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. M.C.I. Foods Inc. v. Bunte, 86 U.S.P.Q. 2d (BNA) 1044, 1046 (T.T.A.B. 2008) (proceeding that involved identical parties, identical registrations and related issues); (3) Here, the cancellations involve the identical parties (4) Both cancellations involve marks centered around the word UNIMUNDO and all claims, defenses, and counterclaims are identical (5) Because the two cancellation proceedings involve essentially the same marks and the same parties whose services compete in the same market and for the same customers, consolidation is appropriate to avoid the significant possibility of inconsistent*

results, to promote efficiency and economy, to reduce the number of duplicative motions, filings, and hearings that are otherwise inevitable due to the many common questions of law and facts shared among the two matters."

This is not the case here and Petitioner Univision could not be more wrong because UNIMUNDO and UNIMUNDO.COM are two separate and distinct organizations doing different things in different businesses despite being owned by Unimundo Corporation. Additionally UNIMUNDO and UNIMUNDO.COM do not share the same business models and the notion that the litigation centers on the word "UNIMUNDO" implies that the word UNIMUNDO cannot be used in any way or form because Univision simply does not like it.

Furthermore, Univision has yet to prove that:

"both cancellation proceedings involve the same parties,

essentially the same marks and the same issues of fact and law."

In F.W. Fitch Co. and F.W. Fitch Manufacturing Co., 46 F.T.C. 1122, 1959 FTC LEXIS 122 (Feb. 1, 1950), while refusing to issue complaints against all members of an industry committing similar marketing acts and to consolidate all such proceedings for hearings and determinations on an industry wide basis, the Commission held:

> "The preparations would undoubtedly have different formulae and the advertisements would be worded differently and would have different approaches to what are perhaps Common advertising objectives. In other words, it would be necessary to try each case. On its merits and it would be impractical to consolidate all the cases and have one series of hearings."

Petitioner Univision's counsel submit that the same evidence will be introduced in both cases:

"Because the two cancellation proceedings involve essentially the same marks and the same parties whose services compete in the same market and for the same customers, consolidation is appropriate to avoid the significant possibility of inconsistent results, to promote efficiency and economy, to reduce the number of duplicative motions, filings, and hearings that are otherwise inevitable due to the many common questions of law and facts shared among the two matters."

This statement is also patently false:

"....same parties whose services compete in the

same market and for the same customers.

And obviously the evidence is different because if that was not the case there would be no need for Univision to bring a new Cancellation Proceedings. Therefore, the notion that this process is all about the word "UNIMUNDO" "*to promote efficiency and economy, to reduce the number of duplicative motions, filings, and hearings that are otherwise inevitable...," with* one single set of evidence and arguments is false.

Neither UNIMUNDO nor UNIMUNDO.COM shares a single service, market or the same customers with Univision and Univision knows it. It is also important to note here that Univision disingenuous new contentions are solely designed to divert attention from the fact that Univision disobeyed the order of January 31, 2013, where they were ordered to conduct discovery by the Board but the chose not to do it. See Exhibit 1.

Additionally, no one can possibly confuse www.UnimundoTV.com with www.univision.com. And, no one looking for www.UnimundoTV.com will ever land at www.univision.com or vice versa. The Logos are different the business model is different and the websites as well as their target market are very different.

Furthermore, Univision in the last three years has not come up with one single piece of evidence that would tie Unimundo to Univision. And, when they had their chance to conduct discovery as ordered by the Board on January 31, 2013, to prove with facts Unimundo's alleged wrong doing; Univision did not conduct discovery for good reason. It is impossible to tie Univision to Unimundo and the discovery would have settled the controversy.

The allegation that Unimundo is in any way or form "*in the same market and for the same customers...*" is yet another insult to Unimundo and a bold face affront; the allegation is misleading and designed to bully, intimidate and harass Unimundo. Unimundo is no closer to Univision than the man on the moon; and if that was the case Univision should have come forward with the statistics and the evidence to back their malicious and untrue allegations.

Moreover, Univision should not be allowed to have disobeyed the discovery order of January 31, 2013, and to try get away from the consequences by boot-strapping the new Cancellation Proceeding to the old one and to force Unimundo to run the gauntlet all over again, particular y when the accusations in both cases are a falsity. **See Exhibit 1.**

It is obvious and it should be noted that it took Univision's attorney almost three years to cook these new sets of allegations against Unimundo, all of which are false trying to escape as fast as they can from the January 31, 2013 discovery order.

Unimundo admits, that although some similarities of fact and law do exist, the proof of each proceeding will undoubtedly be different. There will be different witnesses, different documents, and different fact of each case. See *Chrysler Motors,* 1976 FTC LEXIS 448, *7. The fact that at least some of the evidence may be the same does not provide an adequate basis for ordering consolidation of these matters. See *Crush Int'l Ltd, et al.,* 1970-76 Trade Reg. Rep. (CCH) && 19,806 (FTC Sept. 28, 1971).

As such the differences in the evidence needed to prove the allegations in the instant case dictate against consolidation.

III

THE TRADEMARK BULLING BY UNIVISION IS EXTORTION

It is important to note here that Univision does not have clean hands. Univision is also notorious for engaging in various forms of criminal conduct in the course of their daily business to wit payola and has been investigated multiple times by the Justice Department for conducting payola campaigns directly associated with Univision's attempt to quash the competition and to destroy their competitors any cost.

It is well known in the entertainment industry that Univision practices payola on a daily basis with artist, musical groups, radio stations program directors; and other television stations to advance their agenda:

See http://articles.latimes.com/keyword/payola ;

http://www.kvia.com/news/Univision-To-Pay-1M-In-Payola-Settlement-Gov-t-Says-El-Paso-Radio-Station-Involved/-/391068/545274/-/28oafsz/-/index.html ; See also

FCC Fines Univision for Payola:

http://www.npr.org/blogs/therecord/2010/07/28/128822060/fcc-fines-univision-for-payola

Univision also repeatedly claims that their mark is famous and as such more famous than Unimundo and therefore, Unimundo should fold and hand the name over to Univision. This is exactly how Univision conducts their unscrupulous business in the United State and outside the United States; by bulling, harassing and intimidating. And

whenever they have a chance they will bribe anyone that will be allowed to be bribed. It is that simple.

However, Univision is wrong because Title 15 U.S.C. § 1125(c)(2)(A) (2006) states ("[A] mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner."

The Hispanic market is not the United States; especially 3.6-million Hispanics who watch Univision. In this case, despite Univision's steady growth in the Hispanic market since 2010; Univision's constant boasting of its famous mark is purposely and disproportionately inflated because Univision only reaches a small percentage of its own market in the Hispanic population. Univision reaches no more than 16-percent of the Hispanic population...3.6 million Hispanics. English speaking people and in particular even the young generation of Hispanics does not watch or even know of Univision, precisely because they target only older Hispanics.

According to the 2010 Census, 308.7-million people resided in the United States on April 01, 2010; of which 50.5-million (or 16-percent) were of Hispanic or Latino origin of this 16-percent of Hispanics, Univision only reaches the ages of ages of 18 and 49. The median age of Univision's audience is 37-years of age and therefore only 3.6-million viewers turn to watch Univision in the U.S., according to the Nielsen Ratings. Therefore Univision is not famous in the United States.

Trademark bullying -- defined by one expert in the field as a non-famous brand trying to impose trademark restraints on a non-competing entity without legitimate legal standing by asserting trademark rights beyond what trademark doctrine would recognize. It is like extortion. Univision is in fact bulling Unimundo because Univision is using litigation to enforce rights for a trademark that the law indicates Univision does not reasonably have and in the last three years has been unable to prove.

Univision's so called famous mark in the United States can only be stretched as far as to the tune of 3.6-million Hispanic viewers; out of 50-million Hispanics total population from 308.7-million people residing in the U.S. That translates to less than 1.2-percent of the U.S. Population.

The Trademark bullying by Univision against Unimundo amounts to white-color

extortion a problem because Univision is using their trademarks as a means to unfairly expands their market share without having any meritorious claim through bulling.

Small businesses, for example, typically do not have excess resources available to engage in an expensive legal battle against a well-established business such as Univision where the owner of Univision is reportedly worth several billion dollars and because of his wealth he is and has been engaging in the practice of trademark bullying hiding behind Univision and its attorneys as well as payola.

The financial burden of defending a legitimate trademark or giving up that trademark's use because of trademark bullying can have a detrimental impact on the business climate and the predictability of trademarks in general.

The United States Patent and Trademark Office (USPTO) has defined trademark bullying as the practice of a trademark holder using litigation tactics in an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark holder.

This means that some businesses, both large and small, are filing trademark suits against trademark holders in an attempt to forcefully dissuade that trademark holder from using their own trademark. These actions, called strike suits, typically begin with a cease and desist letter objecting to how the business is using their trademark in commerce. If a cease and desist letter is disregarded or if the business responds that it will not cease their use, a lawsuit typically results, just like it happened here in the case of Unimundo.

Univision is well aware that Unimundo unquestionably is a completely different business than Univision. Unimundo is a video uploading website member supported Univision is not. Unimundo does not target any type of market in any way or form and since its inception March of 2010, has never intentionally targeted the Hispanic market much less any Hispanics community associated or close to Univision.

Registration of the Trademark UNIMUNDO.COM and the UNIMUNDO.COM mark is neither a misappropriation of Univision's rights or usurpation, infringement or seizure of any of Univision's Registered Marks or properties and Univision has made no attempt to disprove it with real facts.

Therefore, Univision's actions against Unimundo can only be construed as Trademark Bulling, harassment and intimidation.

CONCLUSION

The differences in the evidence needed to prove the allegations in the instant case of the mark UNIMUNDO.COM and the old case of mark UNIMUNDO dictate against consolidation, therefore the Motion for Consolidation should be summarily denied.

Additionally, the Board is also requested to allow for the resolution of the February 05, 2013; "Motion for Default Judgment" filed in the mark UNIMUNDO Cancellation 92054050, now pending against Petitioner Univision pursuant to Rule 37(b)(2) of the Fed.R.Civ.Pro.; 37 C.F.R. § 2.120(g)(1); and Fed.R.Civ.P. Rule 37(b)(2)(A)(vi), for failure to obey the discovery order of January 31, 2013; and

Also for the Board to allow for the resolution of the he "Motion to Dismiss Petition" to Cancel the mark UNIMUNDO.COM; Cancellation 92057999, for the failure by Univision to state a claim, pursuant to Fed.R.Civ.Pro. Rule 12(b)(6).

Executed on February 06, 2014

Respectfully submitted,

Unimundo Corporation
By and through
Marcus Fontain, J.D.
President and CEO, in pro se

Exhibit 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN

Mailed: January 31, 2013

Cancellation No. 92054050

Univision Communications Inc.

v.

Unimundo Corp.

By the Trademark Trial and Appeal Board:

This case comes up on the motion of respondent Unimundo Corp., acting pro se, to dismiss the amended petition to cancel pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The motion is contested.

On March 16, 2012, the Board issued an order finding that the original petition to cancel was legally sufficient inasmuch as petitioner pleaded standing, and claims of priority of use and likelihood of confusion, and dilution, but granting the motion to dismiss as to the legally deficient fraud claim. On March 26, 2012, petitioner filed an amended petition to cancel, and on June 14, 2012, respondent filed a motion to dismiss the amended petition.

or raises arguments about the sufficiency of the pleading which the Board has already addressed, respondent will be barred from filing ANY papers without the Board's express permission.

Dates are reset below:

Deadline for Discovery Conference	**3/1/2013**
Discovery Opens	**3/1/2013**
Initial Disclosures Due	**3/31/2013**
Expert Disclosures Due	**7/29/2013**
Discovery Closes	**8/28/2013**
Plaintiff's Pretrial Disclosures	**10/12/2013**
Plaintiff's 30-day Trial Period Ends	**11/26/2013**
Defendant's Pretrial Disclosures	**12/11/2013**
Defendant's 30-day Trial Period Ends	**1/25/2014**
Plaintiff's Rebuttal Disclosures	**2/9/2014**
Plaintiff's 15-day Rebuttal Period Ends	**3/11/2014**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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MOTION TO DISMISS IS DENIED

As set forth in the last order, to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) *quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The pleading is sufficient if it alleges plausible facts as would, if proved, establish that plaintiff is entitled to the relief sought, that is, that 1) plaintiff has standing to maintain the proceeding, and 2) a valid ground exists for denying or cancelling the registration. *See Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998). The amended petition to cancel remains the same with respect to the pleading of petitioner's standing and claims of priority of use and likelihood of confusion, and dilution.

With respect to the fraud claim, the amended petition to cancel corrects the deficiencies in the prior petition inasmuch as petitioner no longer relies on allegations made "on information and belief," but alleges that petitioner investigated respondent's use using internet engines, internet archives, respondent's website, and respondent's publications. The amended petition also alleges that, upon the results of petitioner's investigation, as well as upon information and belief, respondent's statements to the USPTO regarding its use

of the mark on all the listed services knowingly pleads a known misrepresentation, on a material matter, made to procure a registration. The amended fraud claim thus meets the particularity requirements for pleading fraud, including the requirement for generally pleading intent. *Daimlerchrysler Corporation and Chrysler, LLC v. American Motors Corporation*, 94 USPQ2D 1086, 1089 (TTAB 2010).

Respondent's motion to dismiss is denied, and the amended petition to cancel is accepted as the operative pleading in this proceeding. The Board notes that respondent filed an answer denying the salient allegations of the petition to cancel on April 13, 2012.

RESPONDENT ADVISED OF POTENTIAL SANCTION

In the last order the Board noted "We reject respondent's argument that the petition improperly asserts (¶10) third party rights in the likelihood of confusion claim" and assured respondent "the Board will address likelihood of confusion only with respect to registrant's UNIMUNDO and petitioner's pleaded UNIVISION and U marks." Notwithstanding the Board's order, respondent's motion to dismiss moves to strike "any reference to TELEMUNDO", and reiterates at great length its objection to petitioner's argument that respondent's mark improperly combines petitioner's mark UNIVISION with the third party mark TELEMUNDO.

Inasmuch as this has already been addressed, the Board denies respondent's motion to strike.

If a party disagrees with a Board decision on a motion, the party must file a request for reconsideration within thirty days of the order. See Trademark Rule 2.127(b). Respondent did not seek reconsideration here. Accordingly, the Board's decision, that the references in the petition to cancel to TELEMUNDO are relevant to the pleaded issue of likelihood of confusion, will not be revisited.

Respondent was also ordered (Board order of March 16, 2012, p. 2 fn 1) to file just a single copy of any paper. In response to the amended petition to cancel, respondent filed a 9 page motion to dismiss on April 13, 2012; a 7 page supplemental memorandum in support of the motion to dismiss on April 14, 2012, a reply brief on May 15, 2012, and an amended reply brief on May 17, 2012. Titling a paper as "amended" is not sufficient to comply with the Board's order, which is intended to avoid a waste of the Board's time in reviewing repetitive papers.

In addition, respondent raised new matter in its reply brief, which is not permissible. Reply briefs are limited to addressing matters raised in the opposition to the motion.

Ignoring Board orders and renewing failed arguments will not be tolerated. If respondent unnecessarily enlarges the record with duplicative filings - even those titled "amended" -

PROOF OF SERVICE

I Marcus Fontain, on this date have delivered via U.S. mail a copy of this UNIMUNDO'S OPPOSITION MOTION TO PETITIONER UNIVISION'S MOTION FOR CONSOLIDATION, addressed to:

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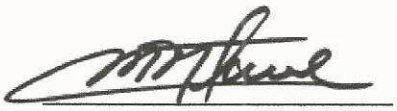
February 06, 2014



Marcus Fontain, J.D.